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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. [redacted] 106

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS,

PETITION FOR WRIT OF CERTIORARI.

GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No.

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS, RESPONDENT.

IN RE UNITED STATES STEEL PRODUCTS COMPANY AND GLOBE INDEMNITY COMPANY APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the United States Steel Products Company and the Globe Indemnity Company respectfully shows to this Honorable Court:

A.

Summary and Statement of the Matter Involved.

1. That your petitioners are aggrieved by the final judgment and decision of the United States Circuit Court of Appeals for the Fifth Circuit, entered in that court on the 13th day of May, 1926, in the case numbered and entitled on the docket of the said court No. 4759, *United States Steel Products Company, claimant and owner of S. S.* "STEEL TRADER," *et al., appellants, vs. Donald J. Adams, appellee* (R., 53 et seq.).

It was held by the said court that Section 4527 of the United States Revised Statutes (Sect. 21 of the Act of June 7, 1872, 17 Stat., c. 322, U. S. Comp. Stats. 1916, Sec. 8318) reading as follows:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

does not mean what it says.

The Circuit Court of Appeals held that the section just quoted did not provide the sole and only remedy

and the total compensation to which a seaman on articles is entitled provided he is wrongfully discharged before one month's wages are earned, without his consent.

The Circuit Court of Appeals held that the statute was not exclusive in describing a remedy or the amount of compensation, and that a seaman discharged under such circumstances could recover, in addition to the amount of the wages earned to the date of his discharge and the extra month's wages provided in the statute, additional sums as compensation for damages for his wrongful discharge.

2. The opinion herein of the Court of Appeals hinges upon two propositions, which it is urged and believed are erroneous:

Put in the court's own language these are:

> First. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him" (R., 54).
>
> Second. "The language of R. S. § 4527 is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressely absolving the vessel, on

> the payment of such amount, from her liability for damages for breaching the contract evidenced by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge" (R., 56, 57).

The decision of the Circuit Court of Appeals is wrong, according to petitioners' contention, because:

1. It interprets the statute contrary to the will and intention of Congress, as expressed in clear words;

2. It places an interpretation and construction upon R. S. 4527 in conflict with reported decisions, and

3. It disregards the purpose for which the statute was enacted, as reflected by its historical background.

There is therefore involved here purely a question of law, involving the construction of a Federal statute.

3. By this decision and decree the Circuit Court of Appeals for the Fifth Circuit affirmed a decree in admiralty of the District Court of the United States for the Eastern District of Louisiana in favor of the libellant seaman, for damages for wrongful discharge in the sum of three hundred and thirty-four and 50/100 dollars ($334.50), with 6 per cent (6%) interest from May 19, 1922, until paid, and all costs of court (R., 41, 42).

4. This is a petition by the said United States Steel Products Company and the Globe Indemnity Company, respectively claimant and surety in the District Court

and appellants in the Circuit Court of Appeals, for a writ of certiorari to review the said decision and decree of the Circuit Court of Appeals for the Fifth Circuit.

5. The libel was brought originally *in rem* in the District Court against the steamship "STEEL TRADER" for damages alleged to have arisen from the wrongful discharge of libellant, in violation of the shipping articles, from the said vessel without his consent before the term of his engagement had been completed (R., 2). Libellant had shipped at New Orleans on or about November 29, 1921, for a voyage to Greece and the far east and return and was wrongfully discharged on the voyage out at Port Arthur, Texas, on December 12, 1921, 13 days after the commencement of the voyage (R., 2, 22 & 27).

The sole defense to the suit is based on the fact that the libellant was discharged within less than 30 days from the time of his employment, before one month's wages were earned, and was paid off in accordance with the statute.

At the time of his discharge he was paid all his wages earned to date of discharge and in addition thereto one month's extra wages as compensation for his discharge.

The libellant having been discharged and these payments having been made under and in accordance with the above-quoted section of the Revised Statutes (R., 22, 24, 26), petitioners' contention throughout has been that the statute fixed libellant's sole and only remedy and compensation under the circumstances.

6. The District Court in its first opinion of December 4, 1925, in favor of libellant, held that R. S. 4527 provided for the one month's extra wages in the way of a penalty, and did not preclude the seaman from pursuing his claim for damages for breach of contract (*The Steel Trader*, 10 Fed. (2d), 248 (R., 28 *et seq.*). A rehearing was then applied for and on December 31, 1925, the District Court refused the rehearing, and gave a second opinion in libellant's favor, in effect, overruling the first opinion.

In the second opinion it held that the statute was applicable only to cases of discharge before the commencement of the voyage and was not applicable to the present case because the libellant was discharged at a second port, even though he was discharged before one month's wages were earned (*The Steel Trader*, 10 Fed. (2d), 250) (R., 35 *et seq.*).

The facts of the case are undisputed and the sole and only issue involved concerns the proper interpretation and construction of the act of Congress above quoted.

B.

Reasons Relied on for the Allowance of the Writ.

Petitioners seek a review by this Court of the decision below and an interpretation and construction of Section 4527 of the United States Revised Statutes for the following reasons:

1. R. S. 4527 has never been before this Court for interpretation and construction and as this case involves solely and only the proper interpretation and

construction of this statute the decision of the Court of Appeals presents an important question of Federal law which has not been, but should be, settled by this Court.

2. Despite the fact that R. S. 4527 was enacted over 50 years ago and is an important statute in everyday use, it is believed and submitted that there is not a decision of any court sustaining, or even suggesting, the interpretation and construction placed upon it by the Court of Appeals in the instant decision.

3. This decision of the Court of Appeals is in conflict with the following decisions of the United States courts where the statute has been before the courts for consideration or application:

The Menton, 287 Fed., 531 (C. C. A., 4th Cir.).

Brown vs. The United States, 283 Fed., 425 (D. C., N. D. Cal.).

Hughes vs. Southern Pacific Company, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.).

The Inland, 271 Fed. 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018).

Caffyn vs. Peabody et al., 149 Fed., 294 (D. C., W. D. Washington).

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine).

The Staghound and *The Gamecock*, 97 Fed., 973 (D. C. Oregon).

The Glenesslin, 96 Fed., 768 (D. C. Oregon).

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal.).

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

These cases will be discussed in the brief supporting the petition.

4. The Court of Appeals in this decision has placed an interpretation and construction upon R. S. 4527 contrary to and in conflict with the interpretation and construction given to that statute by the unanimous decision of the Supreme Judicial Court of Massachusetts, of which Mr. Justice Holmes was then the Chief Justice, in *Calvin vs. Huntley*, 178 Mass., 29. That court, in holding that R. S. 4527 was remedial, not penal, and consequently that the Federal courts do not have exclusive jurisdiction of suits brought by seamen for a recovery under the statute, said, at page 32:

> "Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all fairness he should recover more than the amount due him for wages earned. Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to

> have contracted, and which, therefore, should be taken to be the law of the contract. The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute is not penal, but remedial. It follows that the State court had jurisdiction."

5. Petitioners submit that in the decision complained of, the court has placed an interpretation and construction upon this statute contrary to the ~~clever~~ clear and unambiguous language in which the statute was drafted by Congress and reached its decision only by failing and refusing to give the language of the statute its ordinary meaning.

As the statute is clear and unambiguous, is within the constitutional authority of Congress, and does not lead to absurd or impractical results if literally enforced, there was not any room or necessity in this case for construction or interpretation and the sole function of the court was to enforce the statute according to its terms.

Caminetti vs. United States, 242 U. S., 470, 485, 490.

United States vs. Standard Brewery, 251 U. S., 210, 217.

Dewey vs. United States, 178 U. S., 510, 521.

6. The decision of the Court of Appeals overlooks and disregards entirely the historical background of R. S. 4527 and the purpose which Congress had in view in its enactment.

In the old maritime codes of Europe it was provided especially that where a seaman was wrongfully discharged at the commencement of a voyage he was entitled to a third part of the wages he might have earned.

Marine Ordinances of France, Book III, Tit. IV, Article X (Vol. 2, Peters' Admiralty Decisions, p. xxxii).

Laws of the Hanse Towns, Article XLI (Vol. 1, Peters' Admiralty Decisions, p. cv).

Prior to June 7, 1872, when Congress enacted R. S. 4527, there was no statute in the United States providing a rule of damages for wrongful discharge at the commencement of the voyage and the decisions of our courts were in hopeless conflict as to what damages to award in such cases.

Cf. "*The Rights and Duties of Merchant Seamen*," Curtis (Boston, 1841), pp. 299, 300.

"*A Treatise on the Law of Shipping*," Henry Flanders (Philadelphia, 1853), pp. 145, 146.

In England, however, Parliament, in 1854, enacted a law on the subject, Section 167 of the Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104), and Congress thereupon copied that English statute almost word for word in enacting R. S. 4527. The English statute was amended, its wording being altered slightly, by Section 162 of the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60).

The English courts have held that where a wrongful discharge comes within the terms of their act it

provides for the seamen the sole and exclusive remedy and compensation therefor.

The Olympic, Probate Division (1913), p. 92.
Tindle vs. Davison (Q. B. D.), 7 Aspinall's Reports of Maritime Cases, New Series, p. 169.
Cf. Temperley's "*Merchant Shipping Acts*," 3d ed., Pt. II, Sec. 162, p. 101.

The decision of the Circuit Court of Appeals herein is in direct conflict with those decisions construing the parent statute.

7. Petitioners respectfully submit that this case is of the greatest importance in connection with the relation of vessels of the United States and seamen engaged on them under articles, for it involves a situation which frequently arises before United States Shipping Commissioners, who have to pay off discharged seamen, and if, as the petitioners contend, the decision of the Circuit Court of Appeals is wrong and is not reversed, the litigations which will arise similar to this case will add wholly unnecessarily to the already overburdened calendars of the Federal courts.

This Court, and only this Court, can conclusively define the law on this question for the guidance of Federal courts in all circuits, and it is submitted that the variance of the authorities and the essential importance of the question render it appropriate that this Court should issue a writ of certiorari requiring the case to be brought up to it for review from the Circuit Court of Appeals for the Fifth Circuit.

8. That your petitioners attach hereto as a part hereof a certified copy of the entire transcript of record of all the proceedings in the District Court and in the Circuit Court of Appeals for the Fifth Circuit.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 4759, United States Steel Products Company, claimant and owners of S/S. "STEEL TRADER," *et al.*, appellants, *versus* Donald J. Adams, appellee, and that the said decree of the Circuit Court of Appeals for the Fifth Circuit in the said case may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

UNITED STATES STEEL PRODUCTS COMPANY AND
GLOBE INDEMNITY COMPANY,
By GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared George Denegre, who, being first duly sworn, deposes and says that he is one of the counsel for the petitioners herein; that both petitioners are corporations domiciled outside of the State of Louisiana and none of their officers are present within the State of Louisiana; that he is thoroughly familiar with the above proceedings, and that the facts therein stated are true and correct, to the best of his knowledge, information, and belief, and that he verily believes them to be true, and that in his opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

GEO. DENEGRE.

Sworn to and subscribed before me at New Orleans, La., this 6th day of August, 1926.

[SEAL.] J. C. McGEE,
Not. Pub.

We hereby certify that we have examined the foregoing petition and in our opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

GEO. DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
JOHN M. WOOLSEY,
Counsel for Petitioners.

New Orleans, La., August 6th, 1926.

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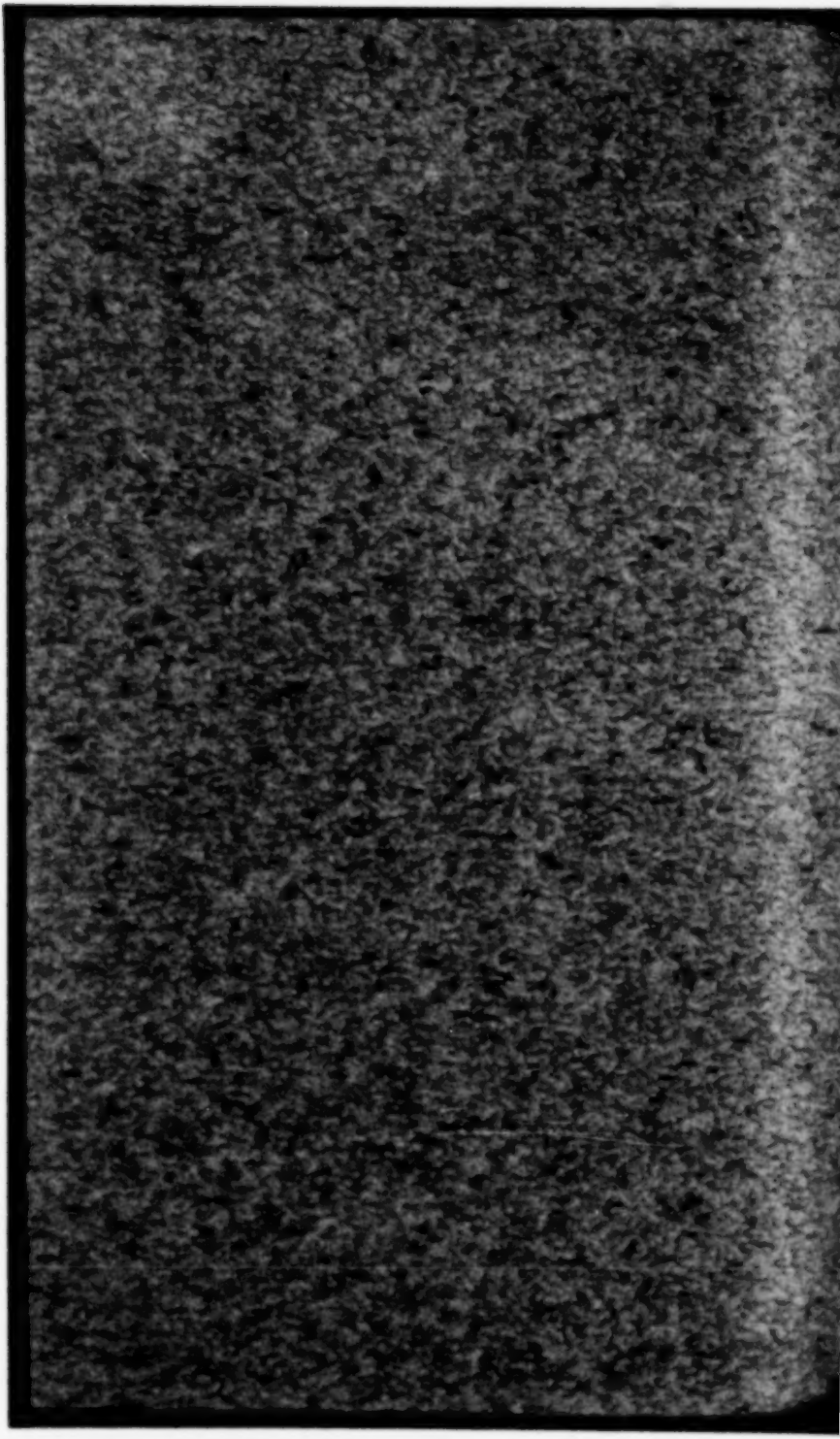

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No.

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS, RESPONDENT.

IN RE UNITED STATES STEEL PRODUCTS COMPANY AND GLOBE INDEMNITY COMPANY APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

III.

The Opinions of the Courts Below.

The opinions in the District Court are reported as *The Steel Trader*, 10th Federal (2d), 248, 250. The opinion of the Circuit Court of Appeals has not been

reported. It is transcribed at pages 53-59 of the record.

IV.

Jurisdiction.

The date of judgment to be reviewed is May 13, 1926. The judgment is printed in the record at page 59, and it constitutes the ruling of the lower court relied on as the basis of this Court's jurisdiction, as said jurisdiction is invoked by petition for review on writ of certiorari of a decision of a Circuit Court of Appeals on the authority of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stats., 938. Accordingly, as jurisdiction does not depend on the nature of the points embodied in such finding, these are not summarized under this heading, but are discussed under the heads of "Statement of the case" and "Argument." No cases are cited to sustain the jurisdiction, as it is clearly statutory and indisputable.

V.

Statement of the Case.

The sole and only question presented by this application involves the interpretation and construction of Section 4527 of the United States Revised Statutes (Sec. 21 of the Act of June 7, 1872, 17 Stat., c. 322, U. S. Comp. Stats. 1916, Sec. 8318), which reads as follows:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's

> **wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."**

The question is whether the decision in this case by the Circuit Court of Appeals for the Fifth Circuit is correct in holding that, notwithstanding the clear and unambiguous language of that statute, the compensation and remedy therein allowed to a seaman wrongfully discharged within the terms of the statute are not exclusive and do not provide the sole and only remedy to which the seaman is entitled.

In this case the court held that although the seaman, Donald J. Adams, respondent herein and libellant below, had been discharged and paid off under and in accordance with the said statute, yet he was entitled to additional damages in this suit for breach of contract for his wrongful discharge.

The case arose under the following state of facts:

On or about November 29, 1921, Donald J. Adams, respondent herein and libellant and appellee below, signed articles as a seaman on the steamship "STEEL TRADER" for a trip from New Orleans to Greece and the far east and return (R., 2, 22, 27).

On December 12, 1921, at Port Arthur, Texas, on the voyage out, Adams was wrongfully discharged from

the vessel and paid off under and in accordance with R. S. 4527, before a United States Shipping Commissioner. He was paid the wages he had earned to the date of his discharge, and also one month's extra wages, as provided in the statute (R., 22, 24, 26).

On May 24, 1922, Adams filed his libel in admiralty in this suit in the United States District Court for the Eastern District of Louisiana, proceeding *in rem* against the steamship "STEEL TRADER" and claiming damages for breach of contract based upon his wrongful discharge from the vessel (R., 2).

Thereupon the United States Steel Products Company, one of the petitioners herein, claimed the vessel as owner (R., 8) and released her from seizure by giving its bond as principal with the Globe Indemnity Company, the other petitioner herein, as surety thereon (R., 9).

The facts of the case were undisputed and the suit was defended on the merits solely on the ground that Adams had been discharged and paid off legally and exactly in accordance with the terms of R. S. 4527 (R., 22, 24, 26), and the vessel and or her owners had consequently complied with and fulfilled all of their obligations and liabilities to him.

On December 4, 1925, the District Court rendered its first opinion in favor of Adams, holding that R. S. 4527 provided only a penalty and did not destroy the seaman's right to damages for ordinary breach of contract (*The Steel Trader*, 10 Fed. (2d), 248); (R., 28 *et seq.*).

On December 31, 1925, the District Court, in refusing an application for rehearing, rendered a second opinion in favor of libellant on entirely different grounds, to wit, that the statute applied only to cases of discharge before the commencement of the voyage and was not applicable to this case, where the discharge occurred at a second port after the voyage had begun (*The Steel Trader*, 10 Fed. (2d), 250); (R., 35 *et seq.*).

A decree was then entered in favor of Adams and against the two petitioners herein in an amount covering the wages libellant would have earned to the end of the voyage upon which he had shipped if he had not been so discharged, less a credit for the one month's extra wages paid him under the statute (R., 41, 42).

Thereupon an appeal was taken by petitioners to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the decree of the District Court and in its opinion of May 13, 1926, held that the remedy and compensation provided for in R. S. 4527 are not exclusive and are meant to cover only the payments due at the time of discharge, leaving the seaman his ordinary remedy for damages for breach of contract in addition to this statutory compensation (R., 53 *et seq.*).

It is to review this decision that this application for a writ of certiorari is being made to this Court.

VI.

Specification of Errors.

1. The Circuit Court of Appeals erred in finding and holding that Rev. Stat., Sec. 4527, did not provide the

sole and only remedy and the total compensation to which a seaman on articles is entitled, provided he is wrongfully discharged before one month's wages are earned, without his consent, and in holding that the statute was not exclusive in describing a remedy or the amount of compensation, and that a seaman discharged under such circumstances could recover, in addition to the amount of the wages earned to the date of his discharge and the extra month's wages provided in the statute, additional sums as compensation for damages for his wrongful discharge.

2. The Circuit Court of Appeals erred in affirming the decree of the District Court in favor of libellant, respondent here, and in not finding and holding that Rev. Stat., Sec. 4527, provided the exclusive remedy to which libellant was entitled; and as it was admitted, and the court found, that libellant had been paid by and received from the vessel and her owners, petitioners here, upon his discharge, the full amount provided by that statute, the court erred in not rendering a decree in favor of petitioner reversing the District Court and dismissing libellant's suit.

VII.

ARGUMENT.

It is submitted that the Circuit Court of Appeals for the Fifth Circuit erred in interpreting and construing as it did Section 4527 of the United States Revised Statutes, because:

1. Its decision is contrary to and in conflict with the Federal and State court decisions which have uniformly construed and enforced the statute as providing the exclusive remedy and compensation covering those discharges coming within its terms; and there is no decision of record sustaining, or even suggesting, the correctness of the construction placed upon the statute by the Court of Appeals.

2. The statute is clear and unambiguous and within the constitutional authority of Congress. To enforce and apply it, giving the language used therein by Congress its ordinary meaning, would not lead to any absurd or impractical results. There was no reason why the Circuit Court of Appeals should place its own interpretation and construction on the statute. The court should have enforced the law literally as written by Congress.

3. In view of the historical development and background of R. S. 4527, a proper construction and interpretation of the statute should have led the court to find that Congress had passed this law for the express purpose of providing a fixed and settled exclusive remedy for American seamen who might be wrongfully discharged under the circumstances embraced within the statute, which would include this case.

A.

Conflict with Prior Federal and State Court Decisions.

Revised Statute 4527 has never been before this Court for interpretation or construction, and it is be-

lieved has only been mentioned or discussed in one decision, namely, in *Tucker vs. Alexandroff*, 183 U. S., 424. There, in discussing the rights and duties of seamen under their shipping articles, the Court said, at page 444:

> "The rights of the seamen in this connection are protected by Section 4527, which declares that 'any seaman who has signed an agreement and who is afterwards *discharged before the commencement of the voyage* or before one month's wages are earned,' shall be entitled to compensation."

In writing the opinion, Mr. Justice Brown evidently concluded that the statute provided a fixed compensation for seamen discharged at the commencement of the voyage.

The Supreme Judicial Court of Massachusetts, in a unanimous decision, in which Mr. Justice Holmes, at that time Chief Justice of that court, concurred, construed this statute in the manner for which the petitioners contend, and not as interpreted by the Circuit Court of Appeals. In *Calvin vs. Huntley*, 178 Mass., 29, a seaman brought suit under R. S. 4527, for wrongful discharge, claiming the compensation therein fixed. The jurisdiction of the court was challenged on the ground that the Federal courts had exclusive jurisdiction under Section 711 of the Revised Statutes of the United States because the suit was for a penalty or forfeiture under the laws of the United States. The court held that the statute was not penal, but remedial, and said (pp. 31, 32):

"In each of these actions the plaintiff, a seaman, seeks to recover against the master of the vessel the wages earned by him up to the time of his discharge, and in addition thereto a sum equal to one month's wages, as provided in Rev. Stat. U. S., Sec. 4527 * * *.

"But it is urged that this is an action to recover a forfeiture or penalty, within the meaning of Rev. Stat. U. S., Sec. 711, cl. 2, which provides that the Federal courts shall have exclusive jurisdiction 'of all suits for penalties and forfeitures incurred under the laws of the United States.' Section 4527, which applies to this action, is as follows: * * * It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover, it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public, as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss, rather than to punish the master for discharging him. The remedy is given to the seaman alone, and its plain purpose is to furnish a clear and well-defined rule of damages, as between him and the master, for a breach of contract in which the seaman and the master or owner are the only persons interested.

"The statute, being the law of the jurisdiction where the contract was made, is the law with reference to which the parties must be presumed to have contracted, or, in other words,

it is the law of the contract, and it is as much a part of the contract as though inserted therein.

"Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all fairness he should recover more than the amount due him for wages earned. Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract. The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute not penal, but remedial. It follows that the State court had jurisdiction."

In the Court of Appeals of New York, in 1924, there was the case of *Cox vs. Lykes Brothers et als.*, 237 N. Y., 376. This was a suit for the extra wages under Section 4529 of the United States Revised Statutes. The court mentioned with approval the construction placed upon R. S. 4527 by the Massachusetts Supreme Court in the *Calvin case, supra*. The court said, at page 379:

"The case cited from Massachusetts is authority for the ruling that an action for extra

> wages under Section 4527 of the United States Revised Statutes (U. S. Comp. St., Sec. 8318), which does not differ in essentials from Section 4529, may be maintained in the State courts, and is not an action for a penalty."

While the interpretation and construction of this statute has never, before the present case, been necessary for a decision by a United States Circuit Court of Appeals, it is believed that in every case where the act has been mentioned, considered or applied by the United States courts, it has always been regarded as the exclusive remedy of seamen wrongfully discharged within the terms of the statute.

In such cases no other or further claim for damages for such a discharge has been made by counsel or allowed by the courts.

The Menton, 287 Fed., 531 (C. C. A., 4th Cir.).

Brown vs. The United States, 283 Fed., 425 (D. C., N. D. Cal.).

Hughes vs. Southern Pacific Company, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.).

The Inland, 271 Fed., 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018).

Caffyn vs. Peabody et al., 149 Fed., 294 (D. C., W. D. Washington).

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine).

The Staghound and The Gamecock, 97 Fed., 973 (D. C., Oregon).

The Glenesslin, 96 Fed., 768 (D. C., Oregon).

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal.).

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

In *Caffyn vs. Peabody et al.*, 149 Fed., 294, a suit was brought by a chief engineer for wrongful discharge from a steamer on the Yukon River under a contract of employment at $250 a month and return expenses. Libellant sued for his full wages and the expenses of his return from the Yukon. The court held the discharge was illegal, and, as more than one month's wages were earned, R. S. 4527 did not apply, but in awarding damages the court said, at page 297:

> "and, having been discharged without his consent, and without fault on his part justifying such discharge, the court allows him as compensation one additional month's wages. I hold this award to be legal and just, by analogy to the measure of compensation prescribed by Section 4527, U. S. Rev. St."

In *The Glenesslin*, 96 Fed., 768, the seamen had not signed articles or performed services, and the court held for that reason they had no lien on the vessel, saying, at page 768:

> "Where services have not, in fact, been rendered, there can be no lien as for wages, except in the cases provided for in Section 4527 of the Revised Statutes, where a shipping agreement has been signed, and the seaman is thereafter

> **unwarrantably discharged by the master. In such cases a sum equal to one month's wages may be recovered."**

In *The Alice Blanchard*, 92 Fed., 519, the libellant had signed articles as cook for a number of voyages. On the day agreed he presented himself for work at noon, but the master contended he should have reported at 8 a. m., and put him ashore and sailed away. Libellant sued for wages (amount not stated) for wrongful discharge. The court held the discharge wrongful, and said (p. 521):

> "The libellant was to receive $50 per month as wages, and under Section 4527 of the United States Revised Statutes he is entitled to recover in this action a sum equal to the amount agreed to be paid him as wages for one month, and costs of suit. So ordered."

This decision is directly in point and holds that the remedy provided by the statute is exclusive.

It is submitted that in addition to the cases already cited, R. S., 4527 has been before the courts only in the following cases, in no one of which has the statute been construed or interpreted according to the decision of the Circuit Court of Appeals herein, viz:

The Donna Lane, 299 Fed., 977 (D. C., W. D. Washington).

The Great Canton, 299 Fed., 953 (D. C., E. D. N. Y.).

The Quaker City, 290 Fed., 409 (D. C., Maryland).

Manhattan Canning Co. vs. Wilson, 205 Fed., 996, and 210 Fed., 898 (D. C., W. D. Washington), affirmed 217 Fed., 41 (C. C. A., 9th Cir.).

The August Belmont, 153 Fed., 639 (D. C., S. D. Ga.).

The Joseph B. Thomas, 136 Fed., 693 (D. C., E. D. Pa.).

The John R. Bergen, 122 Fed., 98 (D. C., S. D. N. Y.).

The Charles D. Lane, 106 Fed., 746 (D. C., Washington).

The Villa y Herman, 101 Fed., 132 (D. C., S. D. Ala.).

Dary vs. The Caroline Miller, 36 Fed., 507 (D. C., S. D. Ala.).

The Schooner Jefferson Borden, 6 Fed., 301 (D. C., Delaware).

The Circuit Court of Appeals for the Fifth Circuit, therefore, has decided herein an important question of Federal law, construing an important Federal statute, and has rendered a decision in conflict with the weight of authority as established by the decisions of the United States courts and of such State courts as have had the question before them.

B.

The Statute is Clear and Unambiguous.

The Circuit Court of Appeals erred in holding that the will and intention of Congress were not expressed in the statute in clear language, free from doubt.

The whole basis of the court's decision rests upon the following excerpts from its opinion:

> 1. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him" (R., 54).
>
> 2. "The language of R. S., Sec. 4527, is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for breaching the contract evidence by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge" (R., 56, 57).

The court holds, for the quoted reasons, that because Congress has not specifically stated that the remedy provided in the statute shall be exclusive or that the seaman may not recover in addition to the amounts provided in the statute further sums in the way of damages for breach of contract, the act must be construed in favor of the seaman and against any such restriction of it.

This interpretation overlooks the fact that Congress

in drafting the act has twice used the word "*compensation*" to describe the one month's extra wages allowed in the act for wrongful discharge. The word "*compensation*" in both ordinary use and as a legal term means payment, consideration, remuneration, or reward. In enacting the statute, Congress, as recognized by the court, had the intention of making provision for seamen discharged at the commencement of a voyage and if Congress intended to provide for a definite and fixed rule of damages it could not have used a more appropriate word than "*compensation.*"

If it had been intended by this statute merely to provide a penalty or temporary bonus to be paid to the seaman at the time of his discharge, reserving to him in addition the right to claim additional damages for breach of contract, Congress would certainly not have used so strong or clear defined a word as "*compensation*" and would have placed in the statute in clear words a reservation of the seaman's rights in that respect.

Congress, in providing that under the circumstances named the seaman should be allowed "in addition to any wages he may have earned a sum equal in amount to one month's wages as *compensation*," clearly negatived the idea that the remedy should be in addition to any other compensation, whether for damages for breach of contract or otherwise.

It is submitted that Congress has provided in this statute a clear-defined constitutional remedy for its wards, the seamen. The remedy is not an unusual one.

By section 4526 of the Revised Statutes of the

United States Congress has provided that in case of the loss or wreck of a vessel the seaman is entitled only to his wages for the services rendered prior to the loss or wreck of the vessel and he is entitled to no further wages regardless of what the terms of his contract might have been.

In section 4582 of the United States Revised Statutes it is provided that if a vessel is sold abroad the seaman is entitled to the wages due him and is to be provided with passage home or its equivalent.

The constitutionality of this statute has never been questioned, but in *Robertson vs. Baldwin*, 165 U. S., 275, this Court held that sections 4598 and 4599 of the Revised Statutes of the United States, requiring seamen to carry out their contracts in accordance with the shipping articles and making them liable to arrest for failure so to do, were constitutional and those sections are also a part of this very Act of June 7, 1872, 17 Stat., 262, which contains R. S. 4527.

This Court said at page 287:

> * * * "In this act and the amendments thereto very careful provisions are made for the protection of seamen against the frauds and cruelty of masters, the devices of boarding-house keepers, and, as far as possible, against the consequences of their own ignorance and improvidence. At the same time discipline is more stringently enforced by additional punishments for desertion, absence without leave, disobedience, insubordination and barratry. Indeed, seamen are treated by Congress, as well as by the Parliament of Great Britain, as deficient in

> that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians; * * * The ancient characterization of seamen as 'wards of admiralty' is even more accurate now than it was formerly."

It is submitted that Congress having acted within its constitutional authority in clear terms providing the remedy to which its particular wards, the seamen, are entitled in certain cases, the Court of Appeals erred in failing and refusing to carry out the will of Congress by enforcing the act as it reads. In so doing that court acted in conflict with the established decisions of this Court.

In Caminetti vs. United States, 242 U. S., 470, it was said, at page 485:

> "It is elementary that the meaning of a statute must in the first instance be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms." * * *
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."

And, again, at page 490:

> "In other words, the language being plain, and not leading to absurd or wholly impractical consequences, it is the sole evidence of the ultimate legislative intent."

In *Dewey vs. United States*, 178 U. S., 510, this Court said, at page 521:

> "This Court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular subject of legislation, this Court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.' Hadden *vs.* The Collector, 5 Wall., 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed."

C.

The History of R. S. 4527.

The origin of R. S., Sec. 4527, dates back to the early maritime codes of Europe. In the *Marine Ordinances of France*, Book III, Tit. IV, Article X (Vol. 2, Peters' Admiralty Decisions, p. XXXII), it was provided:

> "If a master dismiss a mariner without a sufficient cause before the voyage is begun, he must pay him one-third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to the place of his departure." * * *

Article XLI of the *Laws of the Hanse Towns* (Vol. I, Peters' Admiralty Decisions, p. CV), provided:

> "If a mariner behaves himself ill the master may turn him off; but if he discharges him for no reasons before the voyage begins, he shall pay him a third part of his wages, but shall not charge it in the ship's account."

These fixed remedies were not carried into our early maritime laws.

In 1841, George Ticknor Curtis, in his leading text book on the subject, "*The Rights and Duties of Merchant Seaman*," said, at page 299:

> "It does not appear that this proportion of one-third has been adopted in our law, in cases of wrongful discharge before the vessel sails. Damages would undoubtedly be recoverable, in an action of the case at common law, or by a

> libel in the admiralty, for the breach of the contract, to be regulated by the circumstances of the case." * * *

The American authorities all recognized that the courts differed and were in some confusion as to what was the proper measure of damages to award to seamen wrongfully discharged. In 1853, Henry Flanders, in his "*Treatise on the Law of Shipping*," said, at pages 145 and 146:

> "It may be superfluous to add, that if the master improperly discharges a seaman, he and the owner become responsible for damages. The measure of damages in such a case is actual compensation for the injury, according to the circumstances. The amount of damages is neither to be determined by the amount of wages which would be due, computed to the successful termination of the voyage, nor computed to the time of his own return to his country, but should be an indemnity for the actual injury sustained by the breach of the contract."

In 1854 the English Parliament enacted its first law on the subject, Section 167 of the Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104). This act read as follows:

> "Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or

> owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned."

Congress, in drafting R. S. 4527, copied the language of this statute almost *verbatim*.

This English statute was amended in 1894 and is now Section 162 of the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60), and reads:

> "If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned."

The English courts, contrary to the decision herein of the Circuit Court of Appeals, *have held that the remedy provided by their statute is exclusive* and controls all cases of discharge falling within the terms of the statute.

Tindle vs. Davison (Q. B. D.), 7 Aspinall's Reports of Maritime Cases, New Series, p. 169.

The Olympic (Court of Appeal), Probate Division (1913), p. 92.

And cf. Temperley's "*Merchant Shipping Acts*," 3rd Ed., Pt. II, Sec. 162, p. 101.

Maclachlan's "*Law of Shipping*," 6th Ed., by Hart and Bucknill, p. 177.

VIII.

Conclusion.

We submit that this case presents a question of law of great importance to the merchant shipping of the United States, to seamen and shipowners alike. It involves a question that frequently arises before the United States Shipping Commissioners in the discharge of American seamen.

We further submit again that for the reasons herein set forth the conclusion reached by the Circuit Court of Appeals for the Fifth Circuit is erroneous:

1. Because it is contrary to the other adjudged cases on the point;

2. Because it is contrary to the clear words of the statute;

3. Because the court's conclusion disregards the historical background of the statute and the reasons and purposes behind its enactment.

A decision in accordance with petitioners' contentions will prevent endless small litigations in the Federal courts.

We therefore respectfully urge that this case is peculiarly one calling for the exercise by this Court of its supervisory powers, in order that the meaning of this Federal maritime law may be fixed and uniform, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and should finally reverse it.

Respectfully submitted,

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